IN THE PUNJAB AND HARYANA HIGH COURT AT

CHANDIGARH

CWP No.11112 of 2007
Date of decision: 06.12.2007

Divisional Forest Officer.

…Petitioner

Vs.

Sarbati and another.

…Respondents

CORAM:
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Ms. Mamta Singhal Talwar, AAG, Haryana
for the petitioner.

ORDER:

This petition seeks quashing of award dated 7.4.2006, Annexure P-4, reinstating the workman in service with 50% backwages.

Case of the workman was that she was appointed as Beldar-cum-Mali, on daily wages, on 1.1.1990 and she worked upto 27.7.1999. Her services were terminated on 28.7.1999 without following any procedure.

The management contested the claim and pointed out that the plantation work was seasonal in nature and the workman did not work for 240 days in a calendar year.

The Labour Court held that the management failed to produce the record in spite of opportunity given and thus, the

workman was proved to have worked for more than 240 days and termination of her services being without any procedure, the workman was entitled to reinstatement with backwages to the extent of 50%.

Contention raised in the petition is that the workman had actually worked for 83 days in the year preceding the raising of dispute and that the workman having been appointed for a temporary project/scheme i.e. Social Forestry Project & Employment Assurance Scheme (E.A.S.), financially aided by the Central Government and World Bank, services of the workman were liable to be terminated on completion of project in view of law laid down by the Hon'ble Supreme Court in ***State of Himachal Pradesh v. Ashwani Kumar and others*** AIR 1996 SC 960. Reinstatement and award of backwages in favour of the workman was not justified. Burden of proving, that the workman was not gainfully employed, was on the workman as held in ***Reserve Bank of India, Bangalore v. S. Mani & Others*** (2005)5 SCC 100. It has been further submitted that the workman being a seasonable worker, termination of his services as per contract did not amount to retrenchment under Section 2 (oo) of the Act. Further contention is that the workman was not appointed as per any rules or regulations, but by back door and could not be reinstated into service merely for violation of Section 25-F of the Act, even if established, in view of law laid down by the Hon'ble Supreme Court in ***State of Karnataka and others*** *v.* ***Umadevi and others*** (2006) 4 SCC 1.

In spite of service of notice, the workman has not put in appearance. She is, thus, proceeded against ex-parte.

We have considered the submissions made on behalf of the petitioner-State and perused the record.

We find that the view taken by the Hon'ble Supreme Court in ***Municipal Council, Samrala v. Raj Kumar*** (2006) 3 SCC 81 is that unless an employee is appointed as per rules and regulations, his appointment cannot be treated to be consistent with Articles 14 and 16 of the Constitution. Appointment given de hors the rules and regulations is liable to be termination and is covered under Section 2(oo) (bb) of the Act and thus, does not amount to retrenchment. Similarly, in ***Gangadhar Pillai v. Siemens Limited*** (2007) 1 SCC 533, ***Indian Drugs & Pharmaceuticals Ltd. v. Workmen*** (2007) 1 SCC 408, ***Reserve Bank of India v. Gopinath Sharma and another*** (2006) 6 SCC 221 and ***UP Power Corporation Ltd. and another v. Bijli Mazdoor Sangh and others*** (2007) 5 SCC 755, it has been held that reinstatement of a workman in public employment will not be consistent with Article 14 unless the workman had been appointed by following rules and regulations.

Accordingly, this petition is allowed and the impugned award is quashed.

However, having regard to the fact that the workman claimed to have worked for more than 8 years, we consider it appropriate to direct the State to pay compensation of

Rs.50,000/- within 4 months from the date of receipt of a copy of this order.

(ADARSH KUMAR GOEL)
JUDGE

December 06, 2007 **(KANWALJIT SINGH AHLUWALIA)**

ashwani **JUDGE**